

person) aspect of the Event, and was viewed by, accessible to, and enjoyed by in-person Event attendees.

- b. None of the Valuable WBDI in the Event was used at all in Musk’s keynote speech for the Event.
- c. Although the livestream Event Recording continues for about 80 additional minutes after Musk finishes his keynote speech, and although the livestream Event Recording spends substantially all of those 80 minutes documenting the Event and what is happening during it, from numerous different camera viewpoints, none of the Valuable WBDI IP in the Event ever appears on the Event Recording as a focal point for any camera view (with the possible single exception of six seconds nearly at the very end of the Event Recording where the Batmobile is arguably a camera focus).
- d. All of the Valuable WBDI in the Event only ever appears on camera in the Event Recording incidentally, arguably requiring active indication for a casual viewer even to notice it.
- e. Warner Bros. Pictures’ trademarked water tower appears for less than a full second on the Event Recording, and there is the distinct sense by abrupt motion of the camera away from it when it does appear, that the camera operator immediately understood that showing the water tower was prohibited and a mistake. (Event Recording at 0:40:00-0:40:01.)
- f. The Event Recording one point includes a substantial portion of a very-well known sound recording of Haddaway performing “What Is Love?” audibly performed on the Event Recording’s soundtrack. (Event Recording 0:24:20-0:25:46.) However, the Haddaway sound recording is only partially performed on the Event Recording, before all sound on the Event Recording cuts off for a time, then followed by

1 nothing even on the visual feed of the Event Recording or screen saver
2 on the Event Recording for an extended period, until the Event
3 Recording eventually resumes both visual images and a soundtrack.
4 However, after it resumes, for the entire remainder of the Event
5 Recording, the Event Recording soundtrack does not include any
6 readily recognizable popular music, and instead features only generic,
7 almost entirely instrumental, electronic dance music.

8 183. All of the foregoing, especially the Haddaway sound recording
9 incident identified in 182f above, are telltale signs that active policing clearance
10 efforts had been put in place before the Event, and were effectively being
11 implemented during the entirety of the Event livestream, including during Musk's
12 keynote speech. The signs specifically are that the policing protocols were actually
13 implemented effectively for the Valuable WBDI IP in the Event, and for at least
14 some valuable third party music content, but just not for any of Alcon's exclusively
15 owned property, including not for BR2049's protected elements.

16 184. Plaintiff makes the allegations in paragraph 185 below, including all
17 subparagraphs, as **WBDI Actual Policing of Musk and Tesla During the Event**
18 **Alternative Theory 1:**

19 185. Plaintiff alleges on information and belief, subject to need for
20 discovery, that WBDI had the actual and practical ability to police Musk's and
21 Tesla's IP law compliance and contractual compliance during the Event, including
22 during the live and live-streamed display of Musk's keynote speech, and that
23 WBDI in fact actually did so with respect to separate IP content wholly-owned by
24 WBDI or one or more WBDI subsidiaries, and also with respect to third party IP
25 content; WBDI just either intentionally or negligently failed to do so as to Alcon's
26 exclusively owned property, including BR2049 and K.

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a. WBDI Actual Policing of Musk and Tesla During the Event

Alternative Theory 1.1: Plaintiff further alleges on information and belief, subject to the need for discovery, as one specific possibility, that what specifically happened under WBDI Actual Policing of Musk and Tesla During the Event Alternative Theory 1 was as follows:

(i). The best practice and standard operating procedure for studios conducting live events where there will be a physical (in-person) aspect, a livestream aspect, and aspects of IP shopping rights and granting of IP licenses and provision of actual IP content by studio, as were all involved here, and WBDI's actual standard practice and policy, is that the livestream terms must be finalized and understood before finalization of the IP terms. Otherwise, if the IP shopping is conducted and IP license agreements are finalized prior to understanding what the livestream rights are or are not (*e.g.*, whether there will or will not be any livestreaming at all, and for what territories), the IP licenses and clearances risk being incorrect and potentially useless. Different permutations of livestream possibilities require different IP clearances, and on case-by-case basis depending on the particular IP in question

(ii). There was a mistake made by WBDI or Tesla, such that for the Event, whether or not previously agreed, the actual livestream terms in the Event Contract were not communicated to WBDI's licensing and clearance professionals tasked with handling the IP shopping and IP licensing issues, until after the IP work had been substantially completed, and not until relatively near the day of the Event.

(iii). As a result, an emergency situation arose where the Valuable WBDI IP in the Event, and any other IP from third parties, had not been properly cleared for belatedly communicated livestream terms. WBDI's ability to implement all or some of its usual clearance and policing protocols was also impaired.

(iv). If the Event partners to WBDI had been someone less important than Tesla and Musk, WBDI might have communicated that there could be no livestream, or that the scope of the livestream would have to be sharply restricted.

(v). Here, though, WBDI allowed the livestream to go forward, and, as an emergency clearance fix or patch, shortly before the commencement of the Event, WBDI communicated directions to Tesla, and expected performers, including Musk, and the production and direction team in the production truck or video village, that the livestream could go forward, but that Tesla, and all performers, and the production and direction team, were all to understand and take steps such that none of the Valuable WBDI IP in the Event was to be featured in the keynote speech, or publicly performed or displayed on the livestream feed, except incidentally, because some or all of it was not properly cleared for such uses.

(vi). Further, although WBDI easily could have modified or supplemented the above emergency fix or patch instruction expressly to include BR2049 protected elements and other Alcon exclusive-owned property as subject to the same restrictions, WBDI intentionally or negligently failed to do so.

1 186. *WBDI Actual Policing of Musk and Tesla During the Event*

2 **Alternative Theory 2:** Plaintiff alleges on information and belief, subject to the
3 need for discovery, as an alternative theory, that, to the extent that WBDI failed to
4 structure the Event or Event Contract to provide WBDI with actual ability to police
5 violation by Tesla or Musk of IP rights of either WBDI or its subsidiaries or any
6 third party, or if WBDI had such actual ability but failed actually to exercise it,
7 such failure or failures was a material departure from and violation of WBDI's
8 own standard practices and policies, to Alcon's reasonably foreseeable and actual
9 prejudice.

FIRST CLAIM FOR RELIEF

Direct Copyright Infringement in Violation of 17 U.S.C. § 501, et seq.

Against Defendants WBDI, Tesla and Musk

13 187. Plaintiff repeats, re-alleges and incorporates herein by reference each
14 and every allegation set forth in all of the foregoing paragraphs, and in each
15 paragraph of this SAC hereafter, as if set forth herein in full.

16 188. To the extent any of the allegations or theories in this First Claim for
17 Relief are inconsistent with other allegations or theories pled in this SAC, they are
18 pled in the alternative.

19 189. Plaintiff is the author and copyright owner of the motion picture
20 “Blade Runner 2049,” registered with the United States Copyright Office on
21 October 6, 2017, registration number PA0002056792. That is the registered
22 infringed work.

23 190. Defendants Tesla and Musk created at least two infringing works: 1)
24 Exhibit C; and 2) the Event Recording, in the record as Exhibit 2 to the February 4,
25 2025 Omnibus Declaration of Chris Marchese) (“Event Recording”). The
26 specifically infringing portions of the Event Recording are the approximately 11

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1 seconds at the opening of the presentation where Exhibit C is displayed and Musk's
2 accompanying voiceover.

3 191. Musk and Tesla: Defendant Tesla and Musk are direct infringers, in
4 that they violated Plaintiff's exclusive rights in BR2049 in each of the following
5 ways, with the conduct alleged constituting both actual copying and unlawful
6 appropriation in each instance. Defendant WBDI: is a direct infringer in that the
7 violation of Alcon's public display rights as alleged in this SAC and paragraph
8 191f below was conducted on, and transmitted over, WBDI-owned or WBDI-
9 controlled property, infrastructure and systems (specifically including WBDI
10 livestreaming infrastructure systems), and WBDI engaged in volitional conduct as
11 discussed paragraphs 192-193 below:

12 a. Violation of Reproduction Right, 17 U.S.C. § 106(1). Defendants
13 Musk and Tesla infringed this exclusive right of Alcon by the conduct
14 alleged in paragraphs 101, 101a and 101b in this SAC: literal copying
15 of the entirety of BR2049 or of protectable elements of BR2049 such as
16 still images like those in Exhibits A and B, or a partial videorecording
17 of BR2049, to an AI image generator. These allegations are made on
18 the same information and belief and alternative pleading theory basis as
19 set forth in paragraphs 101, 101a and 101b. (**Exhibit C AI Generation
20 Process Alternative Theory 1.**)

21 b. Violation of Reproduction Right, 17 U.S.C. § 106(1). Defendants
22 Musk and Tesla infringed this exclusive right of Alcon by the conduct
23 alleged in paragraphs 101 and 101c in this FAC: literal copying of
24 another work (a "licensed image") as part of the AI image generation
25 process, but the process nonetheless involved an AI image generator
26 engaging in literal copying of the entirety of BR2049 or of protectable
27 elements of BR2049 such as still images like those in Exhibits A and B,

1 or a partial videorecording of BR2049, to an AI image generator, and
2 put into the image generator by Musk and Tesla, or persons under their
3 direction and control. These allegations are made on the same
4 information and belief and alternative pleading theory basis as set forth
5 in paragraphs 101 and 101c. (***Exhibit C AI Generation Process
Alternative Theory 2.***)

6 c. Violation of Reproduction Right, 17 U.S.C. § 106(1). Under the law of
7 the Ninth Circuit as usually interpreted, all of the violations of Alcon's
8 right to prepare derivative works are also necessarily violations of
9 Alcon's reproduction rights.

10 d. Violation of Right to Prepare Derivative Works, 17 U.S.C. § 106(2).

11 The Exhibit C image is an unauthorized derivative work of BR2049,
12 which impermissibly incorporates at least the following protected
13 elements of BR2049 (as the protected elements are detailed in
14 Paragraph 13 of Appendix 2 of this SAC): i) Iconic Still Images which
15 Evoke Qualitatively Important Scenes or Sequences of BR2049; ii) the
16 character K; iii) Urgent Human-AI Decision Point Theme; iv) Mood of
17 Anxiety, Fear and Urgency, and specifically about the Human-AI
18 Decision Point; v) Setting; and vi) Selection and Arrangement of
19 elements, as alleged in paragraph 13f of Appendix 2 of this SAC. See
20 paragraphs 102-122 of this SAC and Exhibits A-D. Alcon further
21 alleges that the Exhibit C image must be treated as an unauthorized
22 derivative work, because Musk by his commentary during the Event
23 and in the Event Recording effectively represents to the audience that it
24 is either itself a protected still image of BR2049, or a derivative work
25 of BR2049, and that Musk and Tesla should therefore be estopped to
26 contend otherwise. *Id.*

1 e. Violation of Right to Prepare Derivative Works, 17 U.S.C. § 106(2).

2 The Event Recording is an unauthorized derivative work of BR2049,
3 which impermissibly incorporates at least the following protected
4 elements of BR2049 (as the protected elements are detailed in
5 Paragraph 13 of Appendix 2 of this SAC): i) Iconic Still Images which
6 Evoke Qualitatively Important Scenes or Sequences of BR2049; ii) the
7 character K; iii) Urgent Human-AI Decision Point Theme; iv) Mood of
8 Anxiety, Fear and Urgency, and specifically about the Human-AI
9 Decision Point; v) Setting; and vi) Selection and Arrangement of
10 elements, as alleged in paragraph 13f of Appendix 2 of this SAC. See
11 paragraphs 102-122 of this SAC and Exhibits A-D. Alcon further
12 alleges that the Exhibit C image must be treated as an unauthorized
13 derivative work, because Musk by his commentary during the Event
14 and in the Event Recording effectively represents to the audience that it
15 is either itself a protected still image of BR2049, or a derivative work
16 of BR2049, and that Musk and Tesla should therefore be estopped to
17 contend otherwise. *Id.*

18 f. Violation of Right to Display Work Publicly, 17 U.S.C. § 106(5). The
19 display of Exhibit image both i) at the live Event and ii) during the
20 livestream of the Event in the United States violated Alcon's public
21 display rights in BR2049 and its protected elements, and all three
22 Defendants have direct infringement liability. Musk and Tesla actively
23 conducted the event resulting in the display, paragraphs 102-122, and
24 the display occurred over WBDI-owned or -controlled systems, to both
25 a large in-person audience, and also to a worldwide audience, including
26 viewers in the United States. SAC, paragraph 109.

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1 192. WBDI engaged in volitional conduct as that term is used in the context
2 of infringement of the 17 U.S.C. § 106(5) public display right. The volitional
3 conduct requirement is a term of art that means sufficient facts for a finding of
4 proximate cause, meaning that the defendant was a direct cause of the infringement
5 pursuant to the way that proximate cause is used in the traditional tort context.
6 Within that framework, at least in the context of online servers and similar
7 situations, volitional conduct may be found where the defendant did any of the
8 following: (1) exercised control; (2) selected any material for upload or storage; or
9 (3) instigated any copying, storage or distribution.

10 193. Here, WBDI was actively involved and either exercised control and/or
11 instigated copying, storage or distribution of the infringed work, which here is
12 BR2049. WBDI held itself out to Musk and Tesla as having rights that WBDI does
13 not have, (SAC, ¶¶ 32-36), led Musk and Tesla to believe until very late in the
14 process that Musk and Tesla would be allowed to use Exhibit A in the Event
15 pursuant to a license from Warner Bros. Pictures, (SAC, ¶¶ 59-78), caused Warner
16 Bros. Pictures to actually provide a high resolution image of protected elements of
17 BR2049 to Musk and Tesla, (SAC, ¶¶ 64-65), and also engaged in a combination of
18 intentional or negligent representations combined with silence (failure to make
19 corrective speech) that resulted in Musk and Tesla potentially understanding they
20 had U.S. copyright permission to use BR2049 elements, or effective immunity for
21 BR2049 infringement claims under U.S. law. (SAC, ¶¶ 92-95.) In addition, given
22 Musk's and Tesla's history with the BR2049 property and how they use it for
23 product reveals, (SAC, ¶¶ 32-36), and Musk's disdain for intellectual property law,
24 (SAC, ¶¶ 27-31), letting Musk and Tesla contract for and conduct the Event while
25 providing content for them, (SAC, ¶¶ 47-54), combined with causing them to
26 anticipate being able to use BR2049 in Musk's keynote warrants a finding of
27 proximate cause, including under the instigation prong. Plaintiff also contends that
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1 WBDI's intentional or negligent failure actively to police Musk and Tesla,
2 especially after receiving the Alcon Event Directions to WBDI and leading Alcon to
3 believe that WBDI would follow them also contributes to the conclusion that a
4 finding of sufficient active involvement to warrant a proximate cause finding of
5 volitional conduct exists. (SAC, ¶¶ 88-92, 98, 155-177, 179-185.)

6 194. Alcon alleges and contends that where substantial similarity analysis is
7 required, Defendants' acts of infringement above as to the character K are subject to
8 the "story being told," distinct delineation, and/or bodily appropriation tests
9 applicable to characters, and that the character K satisfies them. Alcon also stands
10 by and advances its derivative work reference leveraging theory articulated in
11 Alcon's Memorandum of Points and Authorities in Opposition to Musk and Tesla's
12 Motion to Dismiss Plaintiff's First Amended Complaint. Alcon believes that theory
13 is within the parameters of existing copyright case law, but to the extent it is not,
14 Alcon advances it as a novel theory. Alcon also advances the theory that Musk and
15 Tesla's intentions to infringe must be taken into account in favor of substantial
16 similarity findings and analysis. Alcon also believes that is within the parameters of
17 existing case law, but to the extent it is not, Alcon advances it as a novel theory.

18 195. The foregoing acts of Defendants WBDI, Tesla and Musk infringed
19 upon the exclusive rights granted to Alcon under 17 U.S.C. § 106 to reproduce,
20 create derivative works, display, distribute and publicly perform BR2049 and its
21 protectible elements. Such actions and conduct constitute copyright infringement in
22 violation of 17 U.S.C. § 501, *et seq.*

23 196. Plaintiff has complied with 17 U.S.C. §§ 101, *et seq.* and secured and
24 registered the exclusive rights and privileges in and to the copyrights of the above-
25 referenced work in accordance with 17 U.S.C. § 408.

26 197. Plaintiff suffered damages as a result of Defendants' unauthorized use
27 of BR2049 and its protectible elements.

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1 198. Plaintiff is entitled to temporary, preliminary and/or permanent
2 injunctive relief, pursuant to 17 U.S.C. § 502(a).

3 199. Pursuant to 17 U.S.C. § 503 and its subdivisions, Plaintiff is entitled to
4 impoundment of all materials used to achieve the infringement, and records
5 documenting Defendants' exploitation of their infringements, including without
6 limitation all materials used by Defendants or any image generation tool employed
7 by them to generate the Exhibit C Image.

8 200. Plaintiff is entitled to recover and seeks its actual damages and any
9 additional profits of Defendants WBDI, Tesla and Musk attributable to the
10 infringements, under 17 U.S.C. § 504(b).

11 201. Plaintiff also is entitled to elect to recover and seek statutory damages
12 under 17 U.S.C. §§ 512 and 504(c), in an amount of not less than \$750 or more than
13 \$30,000 per infringement of BR2049. Furthermore, Plaintiff is informed and
14 believes and on that basis alleges that Defendants' acts of copyright infringement, as
15 alleged above, were willful, intentional, and malicious. Such acts subject
16 Defendants to liability for statutory damages under Section 504(c)(2) of the
17 Copyright Act in the sum of up to \$150,000 per infringement.

18 202. Within the time permitted by law, Plaintiff will make its election
19 between actual damages and profit disgorgement, or statutory damages.

20 203. Plaintiff also is entitled to a discretionary award of attorney fees under
21 17 U.S.C. § 505.

22 204. Plaintiff seeks or reserves the right to seek any or all of the above forms
23 of relief, in addition to prejudgment interest to the extent legally available and
24 Plaintiff's costs.

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SECOND CLAIM FOR RELIEF

Vicarious Copyright Infringement in Violation of 17 U.S.C. § 501, et seq.

Against Defendants WBDI, Tesla and Musk

205. Plaintiff repeats, re-alleges and incorporates herein by reference each and every allegation set forth in all of the foregoing paragraphs, and each paragraph of this SAC hereafter, as if set forth herein in full.

206. To the extent any of the allegations or theories in this Second Claim for Relief are inconsistent with other allegations or theories pled in this SAC, they are pled in the alternative.

207. If Defendants WBDI, Tesla and Musk are not each liable as direct infringers of BR2049, they are secondarily liable for the infringements directly committed by individual agents, contractors, or other infringers presently unknown (the “Direct Infringers”) under the vicarious infringement doctrine.

208. Defendants Musk and Tesla. As to Musk and Tesla, if they are not themselves the direct infringers, it appears highly likely that they are the masters or employers of the direct infringers, or otherwise had the right and ability to supervise and control the Direct infringers, and that the Direct Infringers infringed in the course and scope of their work for Musk and Tesla. (SAC, ¶¶ 100-122.) It thus appears highly likely that Musk and Tesla would have liability under traditional respondeat superior doctrine, and Alcon pleads that they do. The case law on vicarious copyright infringement appears less than entirely clear on whether such traditional theory respondeat superior vicarious liability for copyright infringement is to be pled as a subset of direct infringement, or under a vicarious infringement claim. Alcon believes that its direct infringement allegations against Musk and Tesla cover the traditional respondeat superior theory, but in the event that theory is more properly placed in a vicarious infringement claim, Alcon pleads it here. Alcon does not here plead as against Musk and Tesla the “direct financial

1 benefit” and “right and ability to supervise” vicarious infringement theory crafted
2 for cases not within traditional respondeat superior liability.

3 209. Defendant WBDI. WBDI had the right and ability to supervise the
4 infringing activity that all the Direct Infringers committed. (SAC, ¶¶ 155-186.)
5 They were also notice actively to exercise their supervisorial rights and powers,
6 both because Musk and Tesla are inherently high risks to infringe against BR2049
7 in particular, (SAC, ¶¶ 27-31), and because Alcon put WBDI on notice with the
8 Alcon Event Directions to WBDI and WBDI intentionally or negligently failed to
9 follow them, after indicated to Alcon that WBDI would perform them. (SAC, ¶¶
10 88-92, 98.)

11 210. WBDI obtained a qualifying level of direct financial benefit from
12 Musk and Tesla and their infringing conduct, and the opportunity to infringe
13 BR2049 was a substantial part of the draw to Musk and Tesla for the monies they
14 paid to WBDI for the overall Event. (SAC, ¶¶ 32-36, 47-54.)

15 211. Alcon also alleges and contends that WBDI took enough actions to
16 pursue the Exhibit A “clip licensing” plan such that, although it was not ultimately
17 consummated, it went far enough that it should be treated as satisfying the draw
18 and directly financial benefit analyses of vicarious copyright infringement law.
19 WBDI held itself out to Musk and Tesla as having rights that WBDI does not have,
20 (SAC, ¶¶ 32-36), led Musk and Tesla to believe until very late in the process that
21 Musk and Tesla would be allowed to use Exhibit A in the Event pursuant to a
22 license from Warner Bros. Pictures, (SAC, ¶¶ 59-78), caused Warner Bros. Pictures
23 to actually provide a high resolution image of protected elements of BR2049 to
24 Musk and Tesla, (SAC, ¶¶ 64-65), set up or proposed an associated payment,
25 (SAC, ¶ 63), and also engaged in a combination of intentional or negligent
26 representations combined with silence (failure to make corrective speech) that
27 resulted in Musk and Tesla potentially understanding they had U.S. copyright

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1 permission to use BR2049 elements, or effective immunity for BR2049
2 infringement claims under U.S. law. (SAC, ¶¶ 92-95.)

3 212. Alcon contends that the Ninth Circuit case law on the directness of the
4 tie required between the financial benefit and the infringement is strict enough that
5 it is possible that even the above facts would not be found close enough. To the
6 extent that is the case, Alcon contends and advances that the relationship here
7 between WBDI and Musk and Tesla is close enough to cases like *Fonovisa v.*
8 *Cherry Auction, Inc.*, 76 F.3d 259 (1996), and the underlying fundamental
9 situations and reasons that led to the vicarious infringement doctrine in the first
10 place, that vicarious liability should be imposed on WBDI, even if that might
11 require a relaxation of some Ninth Circuit law on the strictness of the link required
12 between infringement and direct financial benefit.

13 213. Accordingly, all Defendants had an incentive to permit infringement
14 by the Direct Infringers.

15 214. The foregoing acts of Defendants WBDI, Tesla and Musk infringed
16 upon the exclusive rights granted to Alcon under 17 U.S.C. § 106 to reproduce,
17 create derivative works, and publicly display BR2049 and its protectible elements.
18 Such actions and conduct constitute copyright infringement in violation of 17
19 U.S.C. § 501, *et seq.*

20 215. Plaintiff has complied with 17 U.S.C. §§ 101, *et seq.* and secured and
21 registered the exclusive rights and privileges in and to the copyrights of the above-
22 referenced work in accordance with 17 U.S.C. § 408.

23 216. Plaintiff suffered damages as a result of Defendants' unauthorized use
24 of BR2049 and its protectible elements.

25 217. Plaintiff is entitled to temporary, preliminary and/or permanent
26 injunctive relief, pursuant to 17 U.S.C. § 502(a).

27 218. Pursuant to 17 U.S.C. § 503 and its subdivisions, Plaintiff is entitled to

1 impoundment of all materials used to achieve and records documenting
2 Defendants' exploitation of, their infringements, including without limitation all
3 materials used by Defendants or any image generation tool employed by them to
4 generate the Exhibit C Image.

5 219. Plaintiff is entitled to recover and seeks its actual damages and any
6 additional profits of Defendants WBDI, Tesla and Musk attributable to the
7 infringements, under 17 U.S.C. § 504(b).

8 220. Plaintiff also is entitled to elect to recover and seeks statutory damages
9 under 17 U.S.C. §§ 512 and 504(c), in an amount of not less than \$750 or more
10 than \$30,000 per infringement of BR2049. Furthermore, Plaintiff is informed and
11 believes and on that basis alleges that Defendants' acts of copyright infringement,
12 as alleged above, were willful, intentional, and malicious. Such acts subject
13 Defendants to liability for statutory damages under Section 504(c)(2) of the
14 Copyright Act in the sum of up to \$150,000 per infringement.

15 221. Within the time permitted by law, plaintiff will make its election
16 between actual damages and profit disgorgement, or statutory damages.

17 222. Plaintiff also is entitled to a discretionary award of attorney fees under
18 17 U.S.C. § 505.

19 223. Plaintiff seeks or reserves the right to seek any or all of the above
20 forms of relief, in addition to prejudgment interest to the extent legally available
21 and Plaintiff's costs.

THIRD CLAIM FOR RELIEF

Contributory Copyright Infringement in Violation of 17 U.S.C. § 501, et seq.

Against Defendants WBDI, Tesla and Musk

25 224. Plaintiff repeats, re-alleges and incorporates herein by reference each
26 and every allegation set forth in all of the foregoing paragraphs, and each
27 paragraph of this SAC hereafter, as if set forth herein in full.

1 225. To the extent any of the allegations or theories in this Third Claim for
2 Relief are inconsistent with other allegations or theories pled in this Complaint,
3 they are pled in the alternative.

4 226. If Defendants WBDI, Tesla and Musk are not individually liable as
5 direct infringers of BR2049, they are secondarily liable for the infringements
6 committed by the Direct Infringers under the contributory infringement doctrine.

7 227. Defendants WBDI, Tesla and Musk had, or should have had,
8 knowledge of the infringements of the Direct Infringers.

9 228. Tesla and Musk. Tesla and Musk plainly intentionally included the
10 Exhibit C image in the October 10, 2024 Tesla presentation, and they could plainly
11 see that it was not an actual still image from BR2049, but rather a stylized copy
12 likely to found infringing. Under at least one of Alcon's alternative theories, they
13 also all knew that Alcon had refused permission to use BR2049 or any of its
14 elements in the presentation or in connection with it.

15 229. WBDI. WBDI was conducting clearance for the Event and either
16 knew or should have known of the infringing conduct by the Direct Infringers.
17 WBDI was plainly on notice pursuant to the Alcon Event Directions to WBDI to
18 check on and actively police Musk and Tesla against infringement of BR2049, but
19 intentionally or negligently failed to do so when it could, meeting at least a should
20 have known or willful blindness standard of knowledge, even if WBDI did not
21 actually know about Musk's and Tesla's infringement before and at the time of the
22 Event. Furthermore, regardless, Plaintiff alleges on information and belief, subject
23 to the need for discovery, that WBDI definitely knew when it saw Musk's keynote
24 speech that his and Tesla's actions were infringing, or, at latest, on October 16,
25 2024 when Alcon complained.

26 230. Defendants WBDI, Tesla and Musk either materially contributed to or
27 induced the infringements. Tesla and Musk materially contributed to the direct

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1 infringements by including the Exhibit C image in Musk's presentation. Plaintiff is
2 informed and believes and on that basis and subject to the need for discovery
3 alleges that Musk was determined specifically to reference BR2049 and an image
4 from it in the presentation, and his determination induced the direct infringements
5 by the Direct Infringers of creating the infringing Exhibit C image. Defendant
6 WBDI materially contributed to the direct infringements at the very least in that the
7 event display, distribution and public performance aspects of the infringement
8 occurred at WBDI's Burbank, California studio lot, and with the use and support of
9 WBDI's facilities and technology.

10 231. WBDI also materially contributed to, induced, or encouraged
11 infringement by WBDI holding itself out to Musk and Tesla as having rights that
12 WBDI does not have, (SAC, ¶¶ 32-36), led Musk and Tesla to believe until very
13 late in the process that Musk and Tesla would be allowed to use Exhibit A in the
14 Event pursuant to a license from Warner Bros. Pictures, (SAC, ¶¶ 59-78), caused
15 Warner Bros. Pictures to actually provide a high resolution image of protected
16 elements of BR2049 to Musk and Tesla, (SAC, ¶¶ 64-65), and also engaged in a
17 combination of intentional or negligent representations combined with silence
18 (failure to make corrective speech) that resulted in Musk and Tesla potentially
19 understanding they had U.S. copyright permission to use BR2049 elements, or
20 effective immunity for BR2049 infringement claims under U.S. law. (SAC, ¶¶ 92-
21 95.) In addition, given Musk's and Tesla's history with the BR2049 property and
22 how they use it for product reveals, (SAC, ¶¶ 32-36), and Musk's disdain for
23 intellectual property law, (SAC, ¶¶ 27-31), letting Musk and Tesla contract for and
24 conduct the Event while providing content for them, (SAC, ¶¶ 47-54), combined
25 with causing them to anticipate being able to use BR2049 in Musk's keynote
26 warrants a finding of encouragement or inducement.

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1 232. Furthermore, once WBDI knew of the infringement, which at latest
2 was when Alcon complained on October 16, 2024, WBDI by its silence and failure
3 openly to denounce Musk and Tesla's conduct as infringing has effectively
4 encouraged Musk and Tesla in not remediating, and WBDI is thereby lending
5 support to and/or ratifying the conduct of Musk and Tesla.

6 233. The foregoing acts of Defendants WBDI, Tesla and Musk infringed
7 upon the exclusive rights granted to Alcon under 17 U.S.C. § 106 to reproduce,
8 create derivative works, display, distribute and publicly perform BR2049 and its
9 protectible elements. Such actions and conduct constitute copyright infringement
10 in violation of 17 U.S.C. § 501, *et seq.*

11 234. Plaintiff has complied with 17 U.S.C. §§ 101, *et seq.* and secured and
12 registered the exclusive rights and privileges in and to the copyrights of the above-
13 referenced work in accordance with 17 U.S.C. § 408.

14 235. Plaintiff suffered damages as a result of Defendants' unauthorized use
15 of BR2049 and its protectible elements.

16 236. Plaintiff is entitled to temporary, preliminary and/or permanent
17 injunctive relief, pursuant to 17 U.S.C. § 502(a).

18 237. Pursuant to 17 U.S.C. § 503 and its subdivisions, Plaintiff is entitled to
19 impoundment of all materials used to achieve and records documenting
20 Defendants' exploitation of, their infringements, including without limitation all
21 materials used by Defendants or any image generation tool employed by them to
22 generate the Exhibit C Image.

23 238. Plaintiff is entitled to recover and seeks its actual damages and any
24 additional profits of Defendants WBDI, Tesla and Musk attributable to the
25 infringements, under 17 U.S.C. § 504(b).

26 239. Plaintiff also is entitled to elect to recover and seeks statutory damages
27 under 17 U.S.C. §§ 512 and 504(c), in an amount of not less than \$750 or more

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1 than \$30,000 per infringement of BR2049. Furthermore, Plaintiff is informed and
2 believes and on that basis alleges that Defendants' acts of copyright infringement,
3 as alleged above, were willful, intentional, and malicious. Such acts subject
4 Defendants to liability for statutory damages under Section 504(c)(2) of the
5 Copyright Act in the sum of up to \$150,000 per infringement.

6 240. Within the time permitted by law, Plaintiff will make its election
7 between actual damages and profit disgorgement, or statutory damages.

8 241. Plaintiff also is entitled to a discretionary award of attorney fees under
9 17 U.S.C. § 505.

10 242. Plaintiff seeks or reserves the right to seek any or all of the above
11 forms of relief, in addition to prejudgment interest to the extent legally available
12 and Plaintiff's costs.

FOURTH CLAIM FOR RELIEF

False Affiliation and/or False Endorsement

15 ***in Violation of 15 U.S.C. § 1125(a)(1)(A) against Defendants Musk and Tesla***

16 243. Plaintiff repeats, re-alleges and incorporates herein by reference each
17 and every allegation set forth in all of the foregoing paragraphs, and each
18 paragraph of this SAC hereafter, as if set forth herein in full.

19 244. To the extent any of the allegations or theories in this Fourth Claim for
20 Relief are inconsistent with other allegations or theories pled in this SAC, they are
21 pled in the alternative.

22 245. Alcon owns the marks, trade dress and other Lanham Act-protectable
23 interests identified in paragraphs 137-154 (together, "Alcon's Marks"), and has
24 owned them continuously since prior to 2024.

25 246. Defendants Tesla and Musk have engaged in false representations
26 which are likely to cause confusion, or to cause mistake, or to deceive as to the
27 affiliation, connection or association of Tesla and Musk with Alcon or as to the

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1 sponsorship or approval of Tesla's or Musk's goods, services, or commercial
2 activities by Alcon.

3 247. Plaintiff alleges that Tesla and Musk engaged in the following specific
4 conduct that together constituted false statements that constituted false
5 representations of the type described in the foregoing paragraph 246: the conduct
6 and statements made by Tesla and Musk at the October 10, 2024 Tesla-WBDI
7 event as described in paragraphs 102-124 above, and as further distributed and
8 made available to consumers thereafter by the wide dissemination to and ongoing
9 presence and availability of, the Event Recording to consumers.

10 248. As alleged in detail in paragraphs 102-124 above, in the about eleven
11 seconds of Event presentation on October 10, 2024 which included the Exhibit C
12 image and Musk's accompanying voiceover, Musk and Tesla by their conduct used
13 or evoked all of the following protectable Lanham Act interest of Alcon: a) Alcon's
14 BLADE RUNNER 2049 mark as it is described in paragraph 137; b) Alcon's
15 BLADE RUNNER mark as it is described in paragraph 138; b) Alcon's mark or
16 protectable goodwill in the character K as described in paragraphs 140-142; c)
17 Alcon's protectable trade dress in iconic or recognizable still images from BR2049
18 such as Exhibit A and the Exhibit B images, specifically generating the Exhibit C
19 Image and displaying it with accompanying voiceover by Musk such that it
20 appeared to be either an actual still image from BR2049's Las Vegas Sequence, or
21 a lightly-stylized illustration of K about to enter the irradiated Las Vegas at or near
22 the beginning of the sequence, paragraphs 143-148; and d) a protectable
23 combination as alleged in paragraph 148.

24 249. Tesla and Musk used Alcon's marks and trade dress to advertise cars
25 and a car company, including in the sense of conveying an association between
26 Tesla and its Robotaxi and Alcon, BR2049 and K, which is the type of association
27 that Alcon licenses, and that consumers and other customers expect to be a licensed
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1 association. The Event presentation was for all intents and purposes a long
2 livestreamed advertisement for Tesla and its products, and it reached a substantial
3 set of the general consuming public in the United States, and of Alcon's potential
4 automobile brand partners on BR2049. Although Alcon is not a competitor of
5 Tesla in the car business (it is true that Alcon does not itself sell cars), Alcon is in
6 fact in that business of licensing the BR2049 marks and trade dress to car makers
7 for advertising affiliation, and that is sufficiently in the zone of interests for Alcon
8 to be a proper claimant.

9 250. Tesla's and Musk's unauthorized use of, and references, to Alcon's
10 BR2049 marks and secondary meaning elements had and have the effect of falsely
11 representing that Tesla's and Musk's goods and services are licensed, sponsored,
12 endorsed, or otherwise authorized by Alcon, and/or is at the very least misleading
13 as to these points, and in a business market (automobile brand marketing
14 partnerships on BR2049) in which Alcon is actually an established player.

15 251. Alcon also alleges that Tesla's and Musk's conduct includes explicitly
16 misleading statements, expressions or conduct, within the meaning of *Gordon v.*
17 *Drape Creative, Inc.*, 909 F.3d 257 (9th Cir. 2018), if the test of *Rogers v.*
18 *Grimaldi*, 875 F.2d 994 (2d Cir. 1989) were applied to the Lanham Act claim here,
19 which Alcon contends would be improper. (SAC, ¶ 124.) Alcon advances and
20 maintains all of the arguments against application of *Rogers v. Grimaldi* that
21 Alcon's counsel set forth on April 7, 2025 at the oral argument opposing
22 Defendants' Motions to Dismiss Plaintiff's First Amended Complaint.

23 252. Tesla's and Musk's conduct is likely to cause confusion or mistake
24 and to deceive consumers and/or Alcon's relevant actual and potential business
25 partners as to the endorsement, sponsorship, affiliation, connection, or association
26 of Alcon with Tesla's and Musk's services and products. In this context, Alcon's
27 relevant business partners include automotive brands with potential interest in

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1 brand affiliations with BR2049, including without limitation with the BR2049-
2 based *Blade Runner 2099* television series currently in production by Alcon. They
3 also include business partners in the Hollywood talent pool market where Alcon is
4 active on an everyday basis, and which Hollywood talent pool market generally is
5 less likely to deal with Alcon, or parts of the market may be, if they believe or are
6 confused as to whether, Alcon has an affiliation with Tesla or Musk.

7 253. Tesla and Musk engaged in the above conduct intentionally and in bad
8 faith, conspiring to and then executing a fraudulent scheme falsely to create a
9 purported justification or excuse to feature Alcon's BR2049 prominently at the
10 outset of Tesla's and Musk's Robotaxi or cybercab product reveal presentation, and
11 without paying Alcon any fee for doing so, for the purpose of using BR2049's
12 goodwill to increase the interest level and cache of the new Tesla product pitch and
13 product.

14 254. All of the foregoing false endorsement uses of Alcon's BR2049 marks
15 and goodwill were commercial speech, and not subject to any defense predicated
16 on the nature of the use being a non-commercial use or non-commercial speech.
17 Specifically, some or all of Tesla's and Musk's speech was either (a) core
18 commercial speech in that it proposes a commercial transaction, or in the
19 alternative, (b) was nonetheless commercial for purposes of false endorsement law
20 and Plaintiff's claims herein, in that the communications were advertisements,
21 made reference to a specific product, and the speaker had an economic motivation
22 for the communication, all within the meaning of *Bolger v. Youngs Drugs Products*
23 *Corp.*, 463 U.S. 60 (1983) and its progeny.

24 255. As a direct and proximate result of Tesla's and Musk's wrongful
25 actions, Alcon has suffered damages in an amount to be proven at trial, but in
26 excess of the jurisdictional minimum.

27 256. Alcon further alleges that Tesla's and Musk's unauthorized use of

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1 Alcon's BR2049 marks and secondary meaning elements will continue unless and
2 until Tesla and Musk are enjoined. Alcon has no adequate remedy at law to
3 prevent Tesla and Musk from continuing to wrongfully violate Alcon's rights, and
4 Alcon will suffer irreparable harm unless Defendants are enjoined from continuing
5 their wrongful conduct.

6 257. Defendants Musk and Tesla both had actual knowledge of the
7 wrongfulness of their conduct and the high probability that such acts would cause
8 injury and/or damage to Plaintiff. Despite their knowledge, Defendants Musk and
9 Tesla intentionally pursued their course of conduct, resulting in injury or damage to
10 Plaintiff.

11 **Prayer for Relief**

12 WHEREFORE, Plaintiff prays judgment be entered in its favor and against
13 Defendants, and each of them, as follows:

14 1. On the First Claim for Relief for Copyright Infringement:

15 a. For a preliminary and permanent injunction against Defendants and
16 anyone working in concert with them from further copying, displaying,
17 distributing, selling, or offering to sell BR2049 or protectible elements
18 thereof in connection with Tesla or Musk, or making derivative works
19 thereof for such purposes.

20 b. As permitted under 17 U.S.C. § 503, for impoundment of all copies of
21 the Exhibit C Image and Event Recording and underlying materials
22 used in violation of Plaintiff's copyrights—including digital copies or
23 any other means by which they could be used again by the Defendants
24 without Plaintiff's authorization—as well as all related records and
25 documents.

26 c. For actual damages and all profits that Defendants derived from the
27 unauthorized use of BR2049 or, where applicable and at Plaintiff's

election, statutory damages.

- d. For an award of attorneys' fees.
- e. For an award of pre-judgment interest as allowed by law.
- f. For costs of suit.
- g. For such further relief as the Court deems just and proper.

2. On the Second Claim for Relief for Vicarious Copyright Infringement:

- a. For a preliminary and permanent injunction against Defendants and anyone working in concert with them from further copying, displaying, distributing, selling, or offering to sell BR2049 or protectible elements thereof in connection with Tesla or Musk, or making derivative works thereof for such purposes.
- b. As permitted under 17 U.S.C. § 503, for impoundment of all copies of the Exhibit C image, Event Recording, and underlying materials used in violation of Plaintiff's copyrights—including digital copies or any other means by which they could be used again by the Defendants without Plaintiff's authorization—as well as all related records and documents.
- c. For actual damages and all profits that Defendants derived from the unauthorized use of BR2049 or, where applicable and at Plaintiff's election, statutory damages.
- d. For an award of attorneys' fees.
- e. For an award of pre-judgment interest as allowed by law.
- f. For costs of suit.
- g. For such further relief as the Court deems just and proper.

3. On the Third Claim for Relief for Contributory Copyright Infringement:

a. For a preliminary and permanent injunction against Defendants and anyone working in concert with them from further copying, displaying,

distributing, selling, or offering to sell BR2049 or protectible elements thereof in connection with Tesla or Musk, or making derivative works thereof for such purposes.

- b. As permitted under 17 U.S.C. § 503, for impoundment of all copies of the Exhibit C image, Event Recording, and underlying materials used in violation of Plaintiff's copyrights—including digital copies or any other means by which they could be used again by the Defendants without Plaintiff's authorization—as well as all related records and documents.
- c. For actual damages and all profits that Defendants derived from the unauthorized use of BR2049 or, where applicable and at Plaintiff's election, statutory damages.
- d. For an award of attorneys' fees.
- e. For an award of pre-judgment interest as allowed by law.
- f. For costs of suit.
- g. For such further relief as the Court deems just and proper.

4. On the Fourth Claim for Relief (False Endorsement in Violation of 15 U.S.C. § 1125(a)(1)(A))

- a. For injunctive relief, including without limitation for an order mandating that Defendants Musk and Tesla cease any further promotional or advertising use of BR2049; that Defendants place a corrective notice or disclaimer on the Event Recording and all copies thereof putting viewers on notice that the portions of the event referencing BR2049 false and misleading and that BR2049 and Alcon have no relationship or affiliation with Tesla, Musk or the cyercab product; and an order mandating that Musk and Tesla cease to distribute any further copies of the Event Recording or event livestream

1 that contains the BR2049 references and Exhibit C.
2 b. For compensatory damages;
3 c. Defendants' profits;
4 d. Attorney fees;
5 e. Costs of suit;
6 f. Prejudgment Interest; and
7 g. Such other and further relief as the Court may deem just and proper.

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9 DATED: June 16, 2025

ANDERSON YEH PC

Edward M. Anderson

Regina Yeh

11 By _____



12 Attorneys for Plaintiff

13 ALCON ENTERTAINMENT, LLC

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DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38, on its claims against Defendants Tesla, Inc. (“Tesla”), Elon Musk (“Musk”), and Warner Bros. Discovery, Inc. (“WBDI”), Plaintiff Alcon Entertainment, LLC hereby demands a trial by jury of all matters triable to a jury.

7 DATED: June 16, 2025 ANDERSON YEH PC
8 Edward M. Anderson
9 Regina Yeh
10 By _____
Attorneys for Plaintiff
ALCON ENTERTAINMENT, LLC